

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Applicants: Lavada Campbell BOGGS, et al.

Serial No.: 09/855,180

Filing Date: 14 May 2001

Title: GARMENT HAVING GASKET WITH
INTEGRATED ZONE OF ELASTIC
TENSION AND/OR STRETCH

Confirmation No. 8191

Customer No. 35844

Group No.: 3761

Examiner: K. Reichle

RESUBMISSION OF APPEAL BRIEF UNDER 37 CFR 41.3

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BOARD OF PATENT APPEALS
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Dear Sir:

As a result of a telephone call from Examiner Reichle on 14 July 2005, it has come to Applicants' attention that the Appeal Brief filed by Applicants on 09 February 2005 for the above-referenced patent application has not been forwarded to the Examiner. Applicants are hereby submitting a copy of the originally filed Appeal Brief.

I hereby certify that this correspondence (along with any paper referred to as being attached or enclosed) is being deposited with the United States Postal Service as First Class Mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on

July 19, 2005

7/19/05
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On 09 February 2005, Applicants timely filed an Appeal Brief Under 37 CFR 41.37 and a self-addressed, return-receipt postcard via first-class mail with the United States Postal Service, certified by Certificate of Mailing signed by Maxwell J. Petersen. Applicants subsequently received the self-addressed, return-receipt postcard showing receipt of the Appeal Brief by the Patent and Trademark Office on 15 February 2005.

Enclosed herewith is a copy of the Appeal Brief showing the Certificate of Mailing certifying that the Appeal Brief was mailed to the United States Patent and Trademark Office on 09 February 2005. Also enclosed is a copy of the self-addressed, return-receipt postcard indicating transmittal of the Appeal Brief and showing receipt of the Appeal Brief by the Patent and Trademark Office on 15 February 2005.

Applicants timely filed an Appeal Brief pursuant to the Notice of Appeal filed 10 December 2004 in the present application utilizing the Certificate of Mailing procedures. Consideration of the Appeal Brief is hereby requested.

Since the fee required by 37 CFR 41.37(a)(2) and 37 CFR 41.20(b)(2) was previously submitted with the original filing of the Appeal Brief, no fee is enclosed with this Resubmission of the Appeal Brief.

Respectfully submitted,



Melanie I. Rauch

Registration No. 40,924

Pauley Petersen & Erickson
2800 West Higgins Road
Suite 365
Hoffman Estates, Illinois 60195
(847) 490-1400
FAX (847) 490-1403

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Docket No.: KCC-14,485

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants: Lavada Campbell BOGGS, et al.

Serial No.: 09/855,180

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APPEAL BRIEF UNDER 37 CFR 41.37

Board of Patent Appeals and Interferences
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, Virginia 22313-1450

Dear Sir:

Applicants herewith file their Appeal Brief in the above-identified case,
pursuant to their Notice of Appeal filed 10 December 2004.

1. REAL PARTY IN INTEREST

The real party in interest is Kimberly-Clark Worldwide, Inc., the assignee
of the present application (as recorded at reel 012167, frame 0704).

I hereby certify that this correspondence (along with any paper referred to as being
attached or enclosed) is being deposited with the United States Postal Service as First
Class Mail in an envelope addressed to: Board of Patent Appeals and Interferences,
United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313-
1450 on

09 Feb. 2005

09 Feb. 2005

Date

Maple J. Johnson
Signature

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Serial No.: 09/855,180

Docket No.: KCC-14,485

2. RELATED APPEALS AND INTERFERENCES

Applicants are not aware of any related appeals or interferences with regard to the present application.

3. STATUS OF CLAIMS

Claims 1-6 and 9-58 are pending in the application, with Claims 9-11, 13, 14, 20-24, and 28-58 withdrawn from consideration. The present Appeal is directed to Claims 1-6, 12, 15-19, and 25-27, which were finally rejected in an Office Action mailed 10 June 2004.

4. STATUS OF AMENDMENTS

No amendment to the claims was filed subsequent to the most recent final rejection.

5. SUMMARY OF CLAIMED SUBJECT MATTER

The present invention is directed to a garment 20 having at least one opening for a body part. (Page 15, lines 4-6). The garment 20 has an inner surface 28 and an outer surface 30. (Page 15, lines 12-16; Figs. 1-3).

The garment 20 includes at least one material 100 that defines the opening and extends away from the opening, and a fluid sealing gasket integral with the material in the vicinity of the opening. The fluid sealing gasket interfaces with the body part during use to resist fluid transfer across the gasket. (Page 19, lines 17-20; Figs. 1-7).

The material 100 includes at least one high tension zone 104/131/133, or at least one low stretch zone 104/131/133, that defines the fluid sealing gasket, and at least one low tension zone 102/130/132, or at least one high stretch zone 102/130/132, positioned away from the gasket. (Page 20, lines 12-18; Page 22, lines 1-5; Page 23, lines 5-16; Figs. 3-7).

The high tension/low stretch zone 104 (or zones) includes a plurality of elastomeric filaments 109, and the low tension/high stretch zone 102 (or zones) also includes a plurality of elastomeric filaments 108. (Page 24, line 21 – Page 25, line 4; Page 27, lines 2-10; Figs. 4-7)

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The material also includes a barrier layer 140 having a first surface facing the inner surface 28 of the garment and a second surface opposite the first surface and facing the outer surface 30 of the garment, with at least one of the elastomeric filaments 108 of the low tension (high stretch) zone 102 joined to the first surface of the barrier layer 140 and at least another one of the elastomeric filaments 108 of the low tension (high stretch) zone 102 joined to the second surface of the barrier layer 140. (Page 25, lines 7-10; Page 27, lines 10-12; Fig. 7).

6. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

- 1) Claims 1-5, 12, 15-19, and 25-26 stand rejected under 35 U.S.C. 102(b) as being anticipated by 3M (PCT Publication No. WO 95/34264, hereinafter "*PCT '264*").
- 2) Claims 6 and 27 stand rejected under 35 U.S.C. 103(a) as being unpatentable over *PCT '264* in view of *Kimberly-Clark* (European Patent Application No. 0 688 550 A1, hereinafter "*EP '550*").

7. ARGUMENT

I. Claims 1-5, 12, 15-19, and 25-26 are not anticipated by *PCT '264* under 35 U.S.C. 102(b).

In the final Office Action, mailed 10 June 2004, the Examiner rejected Claims 1-5, 12, 15-19, and 25-26 under 35 U.S.C. 102(b) as being anticipated by *PCT '264*.

Applicants' invention as recited in independent Claims 1 and 25 requires a garment having high and low tension/stretch zones and a barrier layer positioned between at least two elastomeric filaments in the low tension (high stretch) zone. More particularly, Claims 1 and 25 specifically recite first and second surfaces of the barrier layer, further clarifying that one of the surfaces faces the inner surface of the garment and the other surface faces the outer surface of the garment. Claims 1 and 25 also recite at least one elastomeric filament of the low tension (high stretch) zone joined to the first surface of the barrier layer and at least another one of the elastomeric filaments of the low tension (high stretch) zone joined to the second surface of the barrier layer.

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For a reference to anticipate a claim, the reference must disclose each and every element or limitation of the claim. *PCT '264* fails to disclose elastomeric filaments joined to opposite surfaces of a barrier layer. Instead, *PCT '264* discloses an elastic sheet-like composite including a single layer of elastic strands extruded onto one surface of a sheet material.

The Examiner broadly interprets certain limitations of Applicants' Claims 1 and 25 to the point of disregarding other claim limitations. Although Claims 1 and 25 do not state that the elastomeric filaments are "directly" joined to the respective first and second surfaces of the barrier layer, the claims do require that each opposing surface of the barrier layer has at least one filament joined to it. It is reasonable to interpret the term "joined" as either directly or indirectly joined, wherein indirect joining refers to an additional layer or component positioned between the elastomeric filament and the respective (first or second) surface of the barrier layer. However, Applicants' claims distinguish between the joining of filaments to first and second surfaces. Thus, it is improper to interpret the joining of an elastomeric filament to a first surface as *equivalent* to stating that the same elastomeric filament is "indirectly joined" to the second surface. This interpretation both ignores and contradicts Applicants' positively recited limitations (*i.e.*, the specific surfaces to which the elastomeric filaments are joined).

Nevertheless, the Examiner uses this reasoning to conclude that the multiplicity of elastomeric filaments joined to a *single surface* of a substrate in *PCT '264* includes filaments that are directly bonded to the surface as well as filaments that are "indirectly bonded" to the opposite surface. As clearly illustrated in the figures and described in the specification, there are no filaments joined to the opposite surface of the substrate in PCT '264. To interpret Claims 1 and 25 as equating "joined to the first surface" with "joined to the second surface" with no differentiation between the two limitations, improperly disregards the claim distinction between first and second surfaces. The present application does not support the interpretation applied by the Examiner.

Applicants have attempted to amend Claims 1 and 25 in three different ways to convey the concept illustrated in Fig. 7, in which a barrier layer 140 is positioned between elastomeric filaments 108 in the low tension (high stretch) zone 102. Initially, in

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the amendments filed 15 October 2002 and 21 January 2003, Applicants amended Claims 1 and 25 by reciting a barrier layer "between" at least two of the elastomeric [first/second] filaments. Despite Applicants' explanation of this limitation being interpreted in view of the specification and Fig. 7, the Examiner replied in the subsequent Office Action that "It is noted that the claims do not require that the barrier layer only be between the first filaments or that the filaments are on opposite sides of the layer. Therefore since 3M shows a barrier layer 72 extending between at least two of the first filaments which are adjacent each other such meets the claim language." Thus, the Examiner interpreted the term "between" as referring to essentially any connection extending from one filament to another, not limited to opposite surfaces as illustrated in Applicants' Fig. 7 and described in the specification.

Applicants subsequently amended Claims 1 and 25, in the amendment filed 11 September 2003, to recite the barrier layer "having a first surface and a second surface opposite the first surface, with at least one of the elastomeric first or second filaments adjacent the first surface of the barrier layer and at least one of the elastomeric first or second filaments adjacent the second surface of the barrier layer." Despite Applicants' explanation that this amendment was intended to further clarify the concept illustrated in Fig. 7, the Examiner responded by stating that the two "opposite" surfaces may refer to "rightmost" and "leftmost" portions of a surface.

Applicants finally amended Claims 1 and 25, in the amendment filed 19 March 2004, to place these claims into their current state, namely reciting that the barrier layer has a first surface "facing the inner surface of the garment" and a second surface opposite the first surface "and facing the outer surface of the garment," and specifying that at least one of the elastomeric filaments in the low tension (high stretch) zone is "joined to" the first surface and at least another one of the elastomeric filaments in the low tension (high stretch) zone is "joined to" the second surface of the barrier layer. This claim language unambiguously requires the barrier layer to be positioned between at least two elastomeric filaments in the low tension (high stretch) zone, such that at least one of the elastomeric filaments is positioned on one surface and at least another one of the elastomeric filaments is positioned on the opposite surface of the barrier layer. This claim language is unambiguous not only on its face, but also in view of the support

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provided in the application, namely in Fig. 7 (i.e., the elected species), as well as at page 27, lines 10-12, of the specification.

In summary, the prior art does not disclose or suggest the limitations of Applicants' independent claims. For at least the reasons presented above, Applicants respectfully request the Board to overturn this rejection.

II. Claims 6 and 27 are non-obvious under 35 U.S.C. 103(a) based on the teachings of PCT '264 in view of EP '550.

In the final Office Action, mailed 10 June 2004, the Examiner rejected Claims 6 and 27 under 35 U.S.C. 103(a) as being unpatentable over *PCT '264* in view of *EP '550*.

As explained above, *PCT '264* fails to disclose or suggest a garment having elastomeric strands positioned on opposite surfaces of a barrier layer in a low tension (high stretch) zone. *EP '550* fails to overcome the deficiencies of *PCT '264*.

The elastic sheet-like composites in *PCT '264* are formed by extruding elastomeric strands onto one surface of a sheet material. There is no suggestion or motivation provided in *PCT '264* that would lead a person skilled in the art to extrude elastomeric strands onto both surfaces of a sheet material. Even if the teachings of *PCT '264* were combined with the teachings of *EP '550*, the combination would fail to disclose or suggest Applicants' claimed invention. The Examiner suggests that substituting a two-ply barrier layer, as disclosed in *EP '550*, in place of the one-ply film barrier in *PCT '264*, the proposed combination would result in Applicants' claimed invention. However, such a replacement would still lack elastomeric strands on a second surface of the film layer. Neither *PCT '264* nor *EP '550* discloses or suggests elastomeric strands joined to opposite surfaces of a barrier layer.

For at least the reasons presented above, Applicants respectfully request the Board to overturn this rejection.

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8. CONCLUSION

For the above reasons, Applicants respectfully submit that the rejections posed by the Examiner are improper as a matter of law and fact. Accordingly, Applicants respectfully request the Board reverse the rejection of Claims 1-6, 12, 15-19, and 25-27.

A check for the fee required by 37 CFR 41.37(a)(2) and 37 CFR 41.20(b)(2), updated pursuant to the Fiscal Year 2005 Fee Schedule, in the amount of \$500.00, is attached hereto. Please charge any additional amount owed, or credit any overpayment, to Deposit Account 19-3550.

Respectfully submitted,



Maxwell J. Petersen
Registration No. 32,772

Pauley Petersen & Erickson
2800 West Higgins Road
Suite 365
Hoffman Estates, Illinois 60195
(847) 490-1400
FAX (847) 490-1403

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APPENDIX A

1. A garment having at least one opening for a body part, the garment having an inner surface and an outer surface, the garment comprising:

at least one material defining the opening and extending away from the opening; and

a fluid sealing gasket integral with the material and in the vicinity of the opening;

the material including at least one high tension zone defining the fluid sealing gasket, and at least one low tension zone away from the gasket;

the at least one high tension zone including a plurality of elastomeric first filaments, and the at least one low tension zone including a plurality of elastomeric second filaments;

the material further comprising a barrier layer having a first surface facing the inner surface of the garment and a second surface opposite the first surface and facing the outer surface of the garment, with at least one of the elastomeric second filaments joined to the first surface of the barrier layer and at least another one of the elastomeric second filaments joined to the second surface of the barrier layer;

wherein the fluid sealing gasket interfaces with the body part during use to resist fluid transfer across the gasket.

2. The garment of Claim 1 wherein the material comprises a targeted elastic laminate including the low and high tension zones;

the laminate further including a first facing layer bonded to at least a first side of the low tension zone and a first side of the high tension zone.

3. The garment of Claim 1 wherein the material further comprises a targeted elastic laminate including low and high stretch zones.

4. The garment of Claim 1, wherein the elastomeric first and second filaments have different average filament sizes.

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5. The garment of Claim 1, wherein the elastomeric first and second filaments have different filament densities.

6. The garment of Claim 2, further comprising a second facing layer bonded to a second side of the low tension zone and a second side of the high tension zone.

12. The garment of Claim 1, wherein the opening comprises a waist opening.

15. The garment of Claim 1, comprising a diaper.

16. The garment of Claim 1, comprising a training pant.

17. The garment of Claim 1, comprising a feminine hygiene article.

18. The garment of Claim 1, comprising swim wear.

19. The garment of Claim 1, comprising an absorbent underpant.

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25. A garment having at least one opening for a body part, the garment having an inner surface and an outer surface, the garment comprising:

at least one material defining the opening and extending away from the opening; and

a fluid sealing gasket integral with the material and in the vicinity of the opening;

the material including at least one low stretch zone defining the fluid sealing gasket, and at least one high stretch zone away from the gasket;

the at least one high stretch zone including a plurality of elastomeric first filaments, and the at least one low stretch zone including a plurality of elastomeric second filaments;

the material further comprising a barrier layer having a first surface facing the inner surface of the garment and a second surface opposite the first surface and facing the outer surface of the garment, with at least one of the elastomeric first filaments joined to the first surface of the barrier layer and at least another one of the elastomeric first filaments joined to the second surface of the barrier layer;

wherein the fluid sealing gasket interfaces with the body part during use to resist fluid transfer across the gasket.

26. The garment of Claim 25 wherein the material comprises a targeted elastic laminate including the low and high stretch zones;

the laminate further including a first facing layer bonded to at least a first side of the low stretch zone and a first side of the high stretch zone.

27. The garment of Claim 26, further comprising a second facing layer bonded to a second side of the low stretch zone and a second side of the high stretch zone.

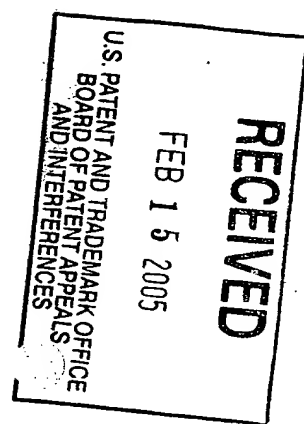
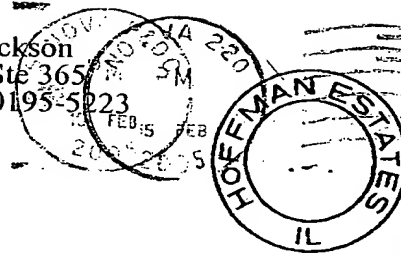
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Pauley Petersen & Erickson
2800 W Higgins Rd, Ste 365
Hoffman Estates IL 60195-5223



Pauley Petersen & Erickson
2800 W Higgins Rd
Ste 365
Hoffman Estates IL 60195-5223



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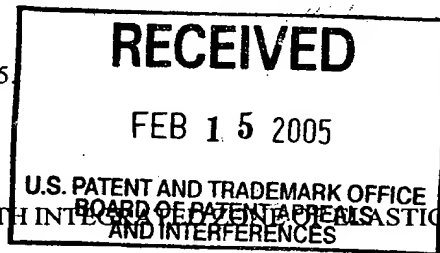
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Please affix the USPTO receipt stamp hereon as evidence of receipt of the following enclosed papers.

- Appeal Brief Under 37 CFR 41.37 (7 pages) along with Appendix A (3 pages), in duplicate
- A check in the amount of \$500 to cover the fee

All by Certificate of Mailing dated 09 February 2005.

Applicants: Lavada Campbell BOGGS et al.
Serial No.: 09/855,180
Filing Date: 14 May 2001
Title: GARMENT HAVING GASKET WITH INTELLECTUAL PROPERTY ELASTIC TENSION AND/OR STRETCH
Customer No.: 35844



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Maxwell J. Petersen

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